

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7786

BILL NUMBER: SB 562

NOTE PREPARED: Apr 9, 2007

BILL AMENDED: Apr 5, 2007

SUBJECT: Authorization procedures for disinterment.

FIRST AUTHOR: Sen. Mishler

FIRST SPONSOR: Rep. Summers

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) *Removal of Remains:* The bill provides that the remains of a deceased human being shall not be removed from a cemetery without written consent from one of the following classes of individuals, in order of priority: (1) The spouse at the time of the deceased's death. (2) A surviving adult child of the deceased. (3) A surviving parent of the deceased. (4) An individual in the next degree of kinship to the deceased under state laws governing intestate succession. (Current law requires the written consent of the deceased's: (1) spouse; or (2) in the case of a deceased minor child, parents.)

It specifies that if more than one individual in the same class survives the deceased, the requirement for written consent is satisfied if: (1) any individual in the class consents to the proposed removal; and (2) the State Department of Health (Department) does not receive an objection to the removal from any other individual in the class.

The bill makes conforming changes to provisions allowing: (1) the required consent to be waived under certain circumstances; (2) a coal company to remove human remains from property owned or leased by the coal company; and (3) the removal of human remains from a cemetery plot for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery.

State Department of Health: It eliminates provisions requiring the Department to take certain actions before authorizing the removal of human remains.

Liability: It also provides that a: (1) licensed funeral director; or (2) cemetery owner; is not liable in an action brought by a person because of the removal of a deceased's remains unless the licensed funeral director or the cemetery owner had actual notice that a representation made in a required written consent was

untrue.

Family Burial Plots: The bill specifies the order of need for a family burial plot and allows the living parents and children to terminate the status of a family burial plot.

Termination of Rights: It allows a cemetery to terminate the rights and interests of the owner of the burial space if the burial space has: (1) remained unused for a period of at least 50 years from the date of sale or last recorded designation or transfer; and (2) not had improvements on the burial space.

Criminal Penalties: The bill makes it a Class C felony if a person knowingly or intentionally uses funds in a perpetual care fund, endowment care fund, or funeral trust for purposes other than the perpetual care fund, endowment fund, or funeral trust was established.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *State Department of Health:* The bill could reduce the administrative work required of the Indiana State Department of Health (ISDH) to authorize the disinterment of human remains. Provisions that would be eliminated include obtaining written evidence of the legal ownership of the property, sending written notice to the Department of Natural Resources, Division of Historic Preservation and Archeology, and obtaining written evidence that the removal has been published in a newspaper at least five days before the removal. The cost savings from these changes are expected to be minimal.

(Revised) *Criminal Penalties - Class C Felonies:* The bill establishes three Class C felonies for knowingly or intentionally using funds for a purpose other than the designated purpose. A Class C felony would apply to :

- Perpetual Care or Endowment Care Funds
- Prepaid Funeral Plans and Funeral Trust Funds Established before 1982
- Funeral Trust Funds

Background on Funds: Under current law, violations of the state statute concerning these type of funds and trusts results in a Class A misdemeanor for perpetual care and endowment care funds and funeral trust funds, or a Class B misdemeanor for prepaid funeral plans and funeral trust funds established before 1982. Also, under current law, there is a Class C misdemeanor for making a false or fraudulent representation concerning a perpetual care or endowment fund. The bill would increase the penalty to a Class C felony for knowing or intentional misuse of funds. There are no data available to indicate how many offenders are convicted of the penalties in current or may be convicted of the criminal penalties under the bill.

A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in DOC facilities for all Class C felony offenders is approximately two years.

Explanation of State Revenues: (Revised) *Criminal Penalties - Class C Felonies:* If additional court cases

occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund.

(Revised) *Criminal Penalties - Class A Misdemeanor*: The bill also creates a Class A misdemeanor for knowingly terminating an owner's rights and interests in a burial space without providing the required notice. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: (Revised) *Criminal Penalties*: A Class B misdemeanor is punishable by up to 180 days in jail and more defendants may be detained in county jails prior to their court hearing. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Criminal Penalty*: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Indiana State Department of Health, Department of Natural Resources, Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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